coupons received by him from time to time against the lands held under the aforesaid titles.

(c) The sum of $176.95 being damages as set out in paragraph 10 hereof.

(d) An enquiry into the amount of the plaintiff's damages under paragraph 11 hereof.

(e) Such other relief as may seem fit.

The first question which arises is whether the plaintiff had any right to be in possession apart from the power of attorney. Even assuming that the charge was not prohibited by section 8 of the Malay Reservations Enactment, 1913, at the time the charge was executed the Land Code of 1926 was in force. Part X of that Code relates to charges. Section 135 relates to the power to receive rents. As far as I have been able to ascertain, there is no question of rents in the present case. Section 137 relates to the going into possession, and is as follows:—

(i) "If default is made in the maintenance or cultivation in a proper manner and according to the methods of good husbandry of any country land the chargee may in writing in the form in the Schedule XXVI with such variations of the form but not of the substance as the Collector may permit, apply to the Collector for a certificate that the chargor has made such default, and the Collector upon proof to his satisfaction of such default having been made may in writing in the form in Schedule XXVII give such certificate.

(ii) "The Registrar upon delivery to him of such certificate may in the form in Schedule XXVII authorise the chargee to enter into possession and receive the profits of the charged land, and no chargee shall except under the authority of such a certificate enter into possession and receive the profits of any charged land unless the chargor shall in writing have consented thereto.

(iii) "The provisions of this section shall only apply to land held under grant, lease of State land or certificate of title."

There is no suggestion that any of the requirements have been complied with, even if this section could be held to relate to E.M.R. land.

It must be remembered that a charge is a very different transaction to a mortgage. There is no such thing as a mortgage of land known to the law of the Federated Malay States. Charges alone are recognised. The rights arising from a charge are contained in the Land Code. It is not possible to seek to introduce the elements of an English mortgage into a charge as provided by the law of the Federated Malay States, and therefore apart from any express powers it is not correct to say that a chargee has the right to enter into occupation. Were it otherwise, there would undoubtedly be such an interest in land that it would be unquestionable that the charge itself was invalid under section 8 of the Malay Reservations Enactment, 1913.

However, it is unnecessary to decide in this case whether the charge is or is not valid under that Enactment, since, even assuming it is valid, the chargee has not entered into possession under the provisions of the Land Code. He has entered into possession by virtue of the power of attorney given by the defendant.

There has been some suggestion during the case that this power of Attorney was to continue until the debt had been paid. In my opinion the power speaks for itself, and it would be unwise to import any additional term on such evidence as has been adduced. The power of attorney is not irrevocable. It has in fact been revoked. Such being the case, the plaintiff is not entitled to remain in possession, and he is not entitled to receive the coupons. There cannot, therefore, be any question of damages under paragraph 11, for the plaintiff should have gone out of possession at the date that the power of attorney was revoked.

Under the power of attorney the plaintiff was entitled to manage the defendant's business as fully and completely as the defendant might do (clause 8), and also to pay all lawful debts of the defendant (clause 3). These powers would entitle the plaintiff to manage the lands in question, and to pay out any profits in reduction of the principal and interest on the charge. The plaintiff would have to furnish accounts, and in such accounts would no doubt appear, in due course, any sums which he had expended on behalf of the estate. If he expended sums in excess of the receipts, then he would be able to recover them against the defendant. That would be a very different proceeding to the present claim for damages.

I have considered the possibility of ordering accounts to be rendered in the present suit, but I consider that as the question of accounts may be involved in other issues. it would not be advisable to make any such order.

In that the plaintiff has not succeeded in respect of any of the heads of this claim, this suit must be dismissed with costs.

Suit dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MUDIE, J.

March 11, 1935.

SUPPIAH ..... **Appellant**

v.

CHOP POH SENG HIN ..... **Respondent**

[NEGRI SEMBILAN MAGISTRATE'S CIVIL APPEAL No. 3 of 1935]

The Civil Procedure Code. 1918, sections 326, 327 and 328—Judgment-debtor summons—Procedure.

Before an order can be made under section 328 of the Civil Procedure Code. 1918, the provisions of section 327 must be complied with.

Appellant in person.

Respondent in person.

MUDIE, J.—The judgment debtor was summoned under section 326 of the Civil Procedure Code, 1918. He was ordered to pay the whole debt within three months. Section 327, which provides for the examination of the debtor on oath, was not complied with. Such an examination is a condition precedent to the making of an order under section 328. The order for payment within three months is, therefore, bad, and must be set aside.

There will be an order setting aside the Magistrate's order and for a re-hearing of the judgment debtor summons.

Order Accordingly.

[ORIGINAL CIVIL JURISDICTION]
HOWES, J.
March 29, 1935.

IN THE MATTER OF THE ESTATE AND EFFECTS OF WAN AHMAD NASIR BIN NGAH IBRAHIM, DECEASED.

CHE NUTEH RAYFEYAH BINTI ABDUL KARIM Plaintiff.

vs.

1. GHOWS KHAN BIN IBRAHIM KHAN AS THE LEGAL REPRESENTATIVE OF IBRAHIM KHAN BIN GAFFOR KHAN, DECEASED.
2. WAN MOHAMED NOOR BIN WAN AHMAD NASIR AS THE LEGAL REPRESENTATIVE OF WAN AHMAD NASIR BIN NGAH IBRAHIM DECEASED ..... Defendants.

[PERAK MISCELLANEOUS CIVIL APPLICATION No. 109 of 1926]

Executors—administration decree—common accounts—arbitration on the accounts—award against deceased executor—Registrar's Certificate based on award—plea of limitation on further consideration—interest on moneys in executor's hands—"costs of suit," meaning of.

One of two proving executors of a will died and the estate of the testator was then left in the charge of the surviving executor I.K. These proceedings were brought by the testator's widow against I.K. for payment of a legacy alleged to be due to her under the will and for general administration of the Estate. During the pendency of the proceedings the surviving executor also died and by his will he appointed the first defendant executor. After I.K.'s death the second defendant obtained Letters of Administration *de bonis non* with will annexed of the estate and the conduct of the proceedings was thenceforward entrusted to him. Under an administration decree passed before I.K.'s death accounts were filed, the matter by agreement between the parties was referred to arbitration and according to the arbitrator's finding the accounts as filed showed that the deceased executor had overcharged the testator's estate to the extent of $31,124.37 which amount was by a subsequent agreement fixed at $30,750/-. The Registrar in due course proceeded with the Inquiry into the accounts and certified that there was a sum of $30,750/- due from the Estate of the deceased executor. This, in effect, was an adoption of the award. No appeal was entered against the Certificate. The second defendant moved the Court for, amongst other things, an order giving effect to the arbitrator's award, in particular, to the disallowance of the sum of $30,750/- from the disbursements shown in the accounts filed, for an order for interest to be charged on moneys which the deceased executor ought to have received in the course of administration and for costs of the inquiries into the accounts and of the Motion to be borne by the first defendant. In answer to the Motion, the first defendant pleaded *inter alia* that the adoption of the award should be claimed in a separate action, that the claim was barred by limitation and that interest ought not to be claimed unless it could be shown that the moneys were actually in the hands of the executor.

Held, that the arbitration and award having been adopted by consent of the parties as a means of ascertaining the extent of the falsifications and the award having been used, by subsequent agreement, as the basis of the Registrar's Certificate, against which no appeal had been lodged, the Court was competent to order the payment into Court of the balance certified to be due from the estate of the deceased executor.

Held further, that the plea of limitation failed, inasmuch as no evidence was adduced in support of the plea and to adjudicate upon it would involve the taking of further evidence.

In re Williams; *Jones* v. *Williams*, (1916) 2 Ch. 41 and *Shah Mohammad* v. *Piara Lal*, (1912) 13 I.C. 792 followed.

Held also, that interest was not chargeable, as there was no evidence of wilful default and it could not be shown that the amount overcharged by the deceased executor was actually received by him.

Held further, that "costs of the suit" includes the costs of all accounts and inquiries requisite for carrying out the decree and that they are not confined to costs up to the hearing.

Krehl v. *Park*, (1875) W.R. 475 followed.

Goho (*B.K. Das* with him) for the first Defendant.

Woods (*Rix* with him) for the second Defendant.

Cur. Adv. Vult.

HOWES, J.—This is a motion praying:—

(a) That the certificate of the Registrar dated the 23rd January, 1935 upon the taking of the accounts herein be varied so far as regards paragraph 4 thereof by the insertion of the words "in his personal capacity" after the word "not" in the first line of such paragraph, and again after the word "defendant" in the third line of such paragraph.

(b) That effect be given to the arbitration award accepted by the parties herein to the disallowance thereby of $30,750.00 from the disbursements shown in the accounts of the first defendant, by the disallowance month by month throughout such accounts of such sums totalling $30,750.00 as shall under the terms of the said award appear just, and that in the absence of agreement between the parties upon the just method of making such disallowance month by month, the same be referred back to the Registrar for a further certificate.

(c) that interest be charged against the estate of Ibrahim Khan deceased at such rates and for such periods as the Court shall think fit.

(d) that the costs of the inquiries into the accounts of the first defendant